

# The Odisha Gazette



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### LABOUR & E. S. I. DEPARTMENT

#### NOTIFICATION

The 11th June 2012

No. 4557—li/1-(B)-346/1992(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th March 2012 in Industrial Dispute Case No. 123 of 1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Divisional Forest Officer, Wild Life Division, Chandaka, Bhubaneswar and its Workman Shri Bhaskar Mahabhoi was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 123 OF 1994

Dated the 14th March 2012

*Present :*

S. A. K. Z. Ahamed, o.s.u.s. (Jr. Branch),  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Divisional Forest Officer, ... First-party—Management  
Chandaka Wild Life Division,  
134/A, Sahidnagar,  
Bhubaneswar.

And

Shri Bhaskar Mahabhoi, ... Second-party—Workman  
At/P.O. Kalarahang,  
Dist. Khurda.

*Appearances :*

Shri S. K. Pattanaik, Forest Ranger	... For the First-party—Management
Shri S. B. Mishra, Advocate	... For the Second-party—Workman

**ORDER**

This Order arises as per the direction made by the Hon'ble High Court of Odisha, Cuttack in the matter of a reference made by the Government of Odisha in the Labour & Employment Department in their Memo. No. 7481(5), dated the 10th June 1994 in exercise of powers conferred under sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of dispute "Whether the termination of services of Shri Bhaskar Mahabhoi, ex N.M.R. Watcher, by the Divisional Forest Officer, Wild Life Division, Chandaka with effect from the 16th March 1991 is legal and/or justified ? If not, what relief Shri Mahabhoi is entitled to ?"

2. For clear clarification, in the present reference the Presiding Officer, Labour Court, Bhubaneswar after hearing both the parties had passed an Award on 15-12-1998 in favour of the workman. The management being aggrieved with the said Award had preferred an O.J.C. bearing No. 12088/1999 before the Hon'ble Court and while remanding back the said matter, the Hon'ble Court have observed as follows :—

"Without entering into the merits of the contentions raised, since admittedly the Labour Court has neither entertained the aforesaid issue nor given any finding thereon, I am of the considered view that the matter is remanded back to the Labour Court, Bhubaneswar with a direction to it to frame an issue on the question as to whether first-party management is an 'industry' as defined under Section 2(j) of the I.D. Act or not and also permit both the parties to lead their evidence in support of their rival stands.

Nothing stated in this order shall be deemed expression of any opinion on the merits of the rival contention."

3. Before going to discuss the evidence in details it is pertinent to mention here the brief facts of the case. The claim of the second-party workman as depicted in his statement of claim in brief is that he was working as N.M.R. under the first-party management with effect from the 24th March 1985 to 15th March 1991. Despite his continuous service, the management has illegally terminated him with effect from the 16th March 1991 without complying the provisions of Section 25-F of the Industrial Disputes Act. Challenging such action of the management, the workman has raised the dispute before the Labour Officer which has been ultimately referred to this Court for adjudication. The workman has further asserted that although he is a graduate and appeared in the interview for the post of Forester, but the management has not appointed in the post of Forester. He has prayed for his reinstatement in service with full back wages.

4. The management has filed the written statement contending that the workman was engaged as a daily labourer on muster roll for maintenance of Solar Electric Fencing as and when work opportunity arose and subject to availability of fund. Due to non-availability of fund as well as work, the workman was disengaged. It is further contended that the Solar Electric Fencing was completely stolen for which there was no scope to provide any work to the workman. On the above backgrounds, it is urged that the disengagement of the workman was not illegal and unjustified. So far as the claim of the workman for the post of Forester is concerned, it is urged that the workman was found physical unsuitable for such post for which he could not succeed in the interview. It is also contended that the management is not an 'industry' as defined under Section 2(j) of the Industrial

Disputes Act. Accordingly it has been contended that the workman is not entitled to get any relief as prayed for.

During the course of hearing both the parties examined one witness each on their behalf on the light of additional issue.

5. "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

6. The first-party management in his additional affidavit evidence has categorically stated that the activities of the management are relating to natural resource management do through conservation propagation, extension and research and it is a public domain for the welfare of society. On the other hand the second-party workman has stated in his affidavit evidence that there was master and servant relationship in between the parties and he has simply stated that the first-party management comes under Section 2(j) of the I. D. Act, 1947. Nothing has been elicited from his mouth to discard his testimony.

7. On the above score, on perusal of the evidence and on scrutiny of the same it reveals that the activities of the first-party management being welfare activities undertaken by the first-party management, the first-party management is fully covered by the definition industry. Besides the above, the Hon'ble Supreme Court in the case of Chief Conservator of Forest and another late Jagannath Maruti Kondhare, etc., 1996(72) FLR 840 (S.C.) hold that Forest Department was an industry. The submission made by the first-party management claim that it was not an "industry" as defined under Section 2(j) of the I.D. Act, 1947 is rejected being devoid of any merit.

9. Hence ordered :

That the first-party organisation is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act. The merit of the dispute having not been challenged in the higher forum, the reliefs granted in favour of the workman in the earlier Award that the workman is entitled to be reinstated in service with effect from the 16th March 1991 with continuing of service but without any back wages and that he is entitled to get his wages from the date of the Award stand unaltered.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED

14-3-2012

Presiding Officer

Labour Court, Bhubaneswar

S. A. K. Z. AHAMED

14-3-2012

Presiding Officer

Labour Court, Bhubaneswar

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By order of the Governor

M. R. CHOUDHURY

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Under-Secretary to Government